

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HAROLD C. MASON,)	CASE NO.: 1:14CV1407
)	
Plaintiff,)	
)	JUDGE DONALD C. NUGENT
v.)	
)	
MICHAEL L. NOCHOMOVITZ, et al.,)	
)	
Defendants.)	

DECLARATION OF DAVID A. CAMPBELL IN SUPPORT OF
MOTION FOR JUDGMENT ON THE PLEADINGS OF DEFENDANTS
MICHAEL L. NOCHOMOVITZ AND UNIVERSITY PRIMARY CARE PRACTICES,
D/B/A UNIVERSITY HOSPITALS MEDICAL PRACTICES

I, David A. Campbell, declare as follows:

1. I am a partner with the law firm of Vorys, Sater, Seymour and Pease LLP. This law firm is counsel for Defendants Michael L. Nochomovitz (“Nochomovitz”) and University Primary Care Practices, d/b/a University Hospitals Medical Practices (“UHMP”) (collectively, “Defendants”) in the captioned-matter.

2. The Amended Complaint filed by Plaintiff Harold C. Mason (“Plaintiff”) attaches a right-to-sue letter sent by the Equal Employment Opportunity Commission (the “EEOC”) to Plaintiff on June 20, 2014. A copy of the right-to-sue letter is attached hereto as Exhibit 1.

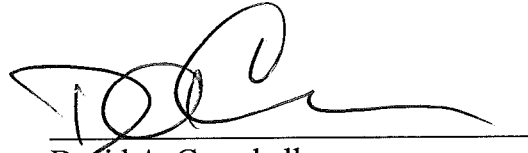
3. On June 9, 2014, Defendants received a Notice of Charge of Discrimination from the EEOC. A copy of the Notice is attached hereto as Exhibit 2.

4. The Notice of Charge advised Defendants that no action was required on their parts at that time. Most importantly, the Notice of Charge informed Defendants that a signed charge had not yet been submitted by Plaintiff. Defendants were advised that a copy of the

signed charge would be sent to Defendants once the EEOC received it from Plaintiff. Defendants never received a charge of discrimination from either the EEOC or Plaintiff.

5. Prior to filing this Motion, I asked Plaintiff if a charge was filed with the EEOC and he informed me that all EEOC documents were attached to the Amended Complaint.

I declare under penalty of perjury under the laws of the State of Ohio and the United States of America that the foregoing is true and accurate.

A handwritten signature in black ink, appearing to read 'D. Campbell', written over a horizontal line.

David A. Campbell

11-24-14

Date

EXHIBIT 1

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U.S. EQUAL E
ITY COMMISSION

EEOC Form 161-B (11/09)

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Harold C. Mason
2621 North Moreland Blvd., #203
Cleveland, OH 44120From: Cleveland Field Office
EEOC, AJC Fed Bldg
1240 E 9th St, Ste 3001
Cleveland, OH 44199☐On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

532-2014-01635

Leona J. Smith,
Acting Intake Supervisor

(216) 522-7515

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☐

More than 180 days have passed since the filing of this charge.

☒

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☒The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.☐

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Spencer H. Lewis, Jr.

Spencer H. Lewis, Jr.
District Director

JUN 26 2014

(Date Mailed)

Enclosures(s)

cc:

Michael L. Nochomovitz
President
UNIVERSITY HOSPITALS MEDICAL PRACTICES
11100 Euclid Ave
Cleveland, OH 44106

EXHIBIT 2

EEOC FORM 131 (11/09)

U.S. Equal Employment Opportunity Commission

Dr. Michael L. Nochomovitz
President & Chief Medical Officer
UNIVERSITY HOSPITALS MEDICAL PRACTICES
11100 Euclid Ave
Cleveland, OH 44106

RECEIVED BY
JUN 9 REC'D
DR. NOCHOMOVITZ

PERSON FILING CHARGE

Harold C. Mason

THIS PERSON (check one or both)

☒ Claims To Be Aggrieved☐ Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

532-2014-01635

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

☒ Title VII of the Civil Rights Act (Title VII)☐ The Equal Pay Act (EPA)☒ The Americans with Disabilities Act (ADA)☒ The Age Discrimination in Employment Act (ADEA)☐ The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. ☒ No action is required by you at this time.2. ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.3. ☐ Please provide by a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.4. ☐ Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.5. ☐ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by toIf you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Leona J. Smith,
Interim Intake Supervisor

EEOC Representative

Telephone (216) 522-7515

Cleveland Field Office
EEOC, AJC Fed Bldg
1240 E 9th St, Ste 3001
Cleveland, OH 44199
Fax: (216) 522-7395

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☒ Race☐ Color☐ Sex☐ Religion☐ National Origin☒ Age☒ Disability☐ Retaliation☐ Genetic Information☐ Other

Date

June 5, 2014

Name / Title of Authorized Official

Connie Davis,
Acting Enforcement Manager

Signature

Enclosure with EEOC
Form 131 (11/09)

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 207(f) of GINA, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Cleveland Field Office**

AJC Federal Building
1240 East Ninth Street, Suite 3001
Cleveland, OH 44199
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Cleveland Status Line: (866) 408-8075
Cleveland Direct Dial: (216) 522-7416
TTY (216) 522-8441
FAX (216) 522-7395

**INSTRUCTIONS RE: NOTICE OF CHARGE OF DISCRIMINATION
WITHOUT A COPY OF THE CHARGE**

Often the EEOC receives correspondence (such as a letter or intake questionnaire) from potential Charging Parties that contains information that is minimally sufficient to file a charge of discrimination. By law, the EEOC is required to date stamp such correspondence, assign a charge number to it, interview the Charging Party, draft a basic charge and mail it to the Charging Party for signature and return. While we are waiting for the signed charge to be returned to us, the Respondent is then sent a Notice of Charge of Discrimination, Form 131, within 10 days of receipt of the initial Charging Party correspondence. A copy of the signed charge is not included due to the fact that the Charging Party has not signed and returned same to EEOC. For this reason, the Respondent is informed on Form 131 that it need not take any action at this time.

Once a signed charge of discrimination is returned to the EEOC on a Form 5 (Charge of Discrimination), a copy of the charge will be sent to the Respondent identifying the specific charge allegations. At this time, the Respondent is asked to either elect to enter into mediation on the charge of discrimination or provide a position statement responding to the Charging Party's allegations. If the Charging Party fails to return a signed copy of the charge or contact EEOC, the charge will be dismissed and the Respondent will be notified.

If you need additional information, please contact Connie Davis, Acting Enforcement Manager at (216) 522-7679.